

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Michael Gallon,)	
)	
)	Civil Action No. 5:21-1465-BHH
v.)	
)	
Warden B. Dobbs,)	<u>OPINION AND ORDER</u>
)	
Respondent.)	
)	

Petitioner Michael Gallon ("Petitioner"), a federal inmate proceeding *pro se*, filed this habeas relief action pursuant to 28 U.S.C. § 2241. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2), D.S.C., this matter was referred to United States Magistrate Judge Kaymani D. West for pre-trial proceedings and a Report and Recommendation ("Report").

On May 27, 2021, and again on June 3, 2021, Magistrate Judge West issued proper form orders, advising Petitioner that he had until June 17, 2021, to correct the defects in his Petition. Petitioner was warned that failure to file an amended petition or cure the deficiencies would subject the case to dismissal. Petitioner failed to comply with those Orders.

On July 12, 2021, Magistrate Judge West issued a Report recommending that this action be dismissed in accordance with Federal Rule of Civil Procedure 41(b) for failure to file an amended petition, and for failure to comply with a court order. (ECF No. 21.) Attached to the Magistrate Judge's Report was a notice advising Petitioner of his right to file written objections to the Report within fourteen days of being served with a copy. (*Id.* at 5.) Petitioner filed no objections and the time for doing so expired on July 29, 2021. (*See id.* (noting objections were due by July 26, 2021, with an additional three days to be added if served by mail).)

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court reviews the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation” (quotation marks and citation omitted)).

After a thorough review of the record of this matter, the applicable law, and the Report, the Court finds no clear error. Accordingly, the Court adopts and incorporates the Report (ECF No. 21) by reference herein. It is therefore ORDERED that this action be dismissed for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989).

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

August 5, 2021
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.